

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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ALADDIN ABDAL RAHIM, :

Plaintiff, : 11 Civ. 2924 (LTS) (HBP)

-against- :

PO N. ALMONTE, et al., :

Defendants. :

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PITMAN, United States Magistrate Judge:

TO THE HONORABLE LAURA TAYLOR SWAIN, United States
District Judge,

Plaintiff commenced this action Section 1983 action in
April 2011, alleging that he was arrested without probable cause
and subjected to excessive force.

Plaintiff appeared for an initial scheduling conference
on July 17, 2012, but has been out of contact with the Court and
defendants' counsel since that time. Defendants' counsel has
advised me that plaintiff has neither responded to defendants'
discovery requests, nor has plaintiff served any discovery
requests of his own.

In light of the inactivity in the case, I scheduled a
status conference for November 7, 2013. A copy of the endorsed

order scheduling the conference was mailed to plaintiff at the address on file with the clerk's office; it has not been returned as undeliverable. Nevertheless, plaintiff failed to appear at the November 7 conference and did not contact my chambers in any way concerning the conference or any other matter.

As a result of plaintiff's failure to appear at the November 7 status conference, I issued an Order on November 8, 2013 that rescheduled the conference and provided, in pertinent part:

Plaintiff's inactivity and his failure to appear at yesterday's conference strongly suggest that he has no interest in prosecuting this case and has abandoned it. Nevertheless, I shall give plaintiff one more opportunity to demonstrate his interest in continuing with this case.

The status conference in this matter is adjourned to December 11, 2013 at 9:30 a.m. in Courtroom 18-A at the United States Courthouse, 500 Pearl Street, New York, New York. **IF PLAINTIFF FAILS TO APPEAR FOR THE DECEMBER 11, 2013 CONFERENCE, IT IS MY INTENTION TO ISSUE A REPORT AND RECOMMENDATION RECOMMENDING THAT THE ACTION BE DISMISSED FOR FAILURE TO PROSECUTE.**

(Docket Item 32; emphasis in original). A copy of this Order was mailed to plaintiff at the address on file with the clerk's office; it has not been returned as undeliverable. Plaintiff neither appeared for the December 11 conference, nor did he contact my chambers in any way concerning the conference or any other matter.

In view of plaintiff's long period of inactivity in this matter and his failure to attend the two conferences recently scheduled in this matter, the conclusion is inescapable that plaintiff has abandoned this action and has no intention of pursuing it. Accordingly, I respectfully recommend that the action be dismissed for failure to prosecute pursuant to Fed.R.Civ.P. 41(b). I further recommend that the dismissal be without prejudice because of the possibility that plaintiff's inactivity in this action is the result of circumstances beyond his control.

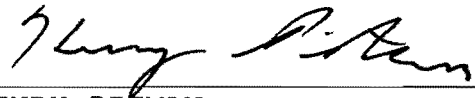
OBJECTIONS

Pursuant to 28 U.S.C. § 636(b)(1)(c) and Rule 72(b) of the Federal Rules of Civil Procedure, the parties shall have fourteen (14) days from receipt of this Report to file written objections. See also Fed.R.Civ.P. 6(a). Such objections (and responses thereto) shall be filed with the Clerk of the Court, with courtesy copies delivered to the Chambers of the Honorable Laura Taylor Swain, United States District Judge, 500 Pearl Street, Room 755, New York, New York 10007, and to the Chambers of the undersigned, 500 Pearl Street, Room 750, New York, New York 10007. Any requests for an extension of time for filing objections must be directed to Judge Swain. FAILURE TO OBJECT

WITHIN FOURTEEN (14) DAYS WILL RESULT IN A WAIVER OF OBJECTIONS AND WILL PRECLUDE APPELLATE REVIEW. Thomas v. Arn, 474 U.S. 140, 155 (1985); United States v. Male Juvenile, 121 F.3d 34, 38 (2d Cir. 1997); IUE AFL-CIO Pension Fund v. Herrmann, 9 F.3d 1049, 1054 (2d Cir. 1993); Frank v. Johnson, 968 F.2d 298, 300 (2d Cir. 1992); Wesolek v. Canadair Ltd., 838 F.2d 55, 57-59 (2d Cir. 1988); McCarthy v. Manson, 714 F.2d 234, 237-238 (2d Cir. 1983).

Dated: New York, New York
December 11, 2013

Respectfully submitted,



HENRY PITMAN
United States Magistrate Judge

Copies transmitted to:

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